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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,089	05/29/2002	Christopher Mears	169801	2728
26694	7590	01/14/2004	EXAMINER	
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			WALCZAK, DAVID J	
			ART UNIT	PAPER NUMBER
			3751	
DATE MAILED: 01/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/763,089	MEARS ET AL.	
	Examiner	Art Unit	
	David J. Walczak	3751	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 29 May 2002.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 12-41 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 12-16,25-27,33-35 and 37-41 is/are rejected.

7) Claim(s) 17-24, 28-32 and 36 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 May 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to because reference character 66 (page 16, line 2) is not present in any of the drawings. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: As this application is a continuation of PCT/US99/18738 (according to the declaration), such continuing data should be inserted on the top of page 1 of the specification. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 25, an antecedent basis for "the constituents", "the mixing chamber" and "the inlet ducts" should be defined. In regard to claim 26, an antecedent basis for "the container valves", "the containers" and "the respective inlet ducts" should be defined.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Durham. In regard to claim 12, Durham discloses a “hand held” applicator for dispensing a fluid product comprised of an inlet 14, an outlet 16, a tortuous path (defined by baffles 28) and a baffle mixing station 30 disposed in the flow path. In regard to claim 25, viewing Figure 4, the top baffle defines a baffle member disposed in the inlet region and positioned to create flow separation and turbulence.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegner et al. (hereinafter Wiegner) in view of Durham. Wiegner discloses a hand held applicator for dispensing a fluid product comprised of an inlet 15, an outlet 13 and a

tortuous flow path therebetween. Although the Wiegner device does not include a baffle mixing station in the path, attention is directed to the Durham reference, which discloses such a mixing station 30 (as defined *supra*) in order to enhance the mixing the products. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a baffle mixing station within the flow path of the Wiegner device in order to better mix the products.

Claims 13-15 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiegner in view of Durham as applied to claim 12 above, and further in view of Miya. In regard to claim 13, although the Weigner device does not disclose a plurality of hollow tines therein in order to apply the product, attention is directed to the Miya reference, which discloses another dispenser for two mixed hair products (The Wiegner device is also used to apply two mixed hair products) wherein a plurality of hollow tines are employed in order to effectively spread the mixed products through the hair. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such an applicator onto the Wiegner device in order to enable the device to effectively apply the product. In regard to claim 14, the Miya device includes hollow and solid tines (see Figures 15 and 18). In regard to claim 15, viewing Figure 18, the solid tines are longer than the hollow tines. In regard to claim 26, the Wiegner device includes an actuator 4 for simultaneously actuating the container valves.

Claims 27, 33-35 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safianoff in view of Durham. In regard to claim 27, the Safianoff

reference discloses a dispensing device for use atop a plurality of valved containers comprised of a plurality of inlet ducts 64 and a mixing chamber 50 having an inlet, an outlet and a tortuous flow path therebetween. Although the Flow path does not include a baffle mixing station therein, attention is directed to the Durham reference, which, as discussed supra, includes such a baffle mixing station. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such a baffle mixing station into the flow path of the Safianoff device in order to better mix the products. In regard to claim 33, Safianoff discloses a "baffle member" 60 disposed in the inlet region which would inherently cause flow separation. In regard to claim 34, an actuator 30 simultaneously actuates the valves. In regard to claim 35, the mixing chamber includes two complementary sections 50 and 74 which have wall portions that abut each other to define the flow path. In regard to claim 38, the flow path has a sinuous shape. In regard to claim 39, the mixing chamber includes a baffle 72. In regard to claim 40, a plurality of baffle members 72 define the flow path.

Claims 37 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safianoff in view of Durham (as discussed above), and further in view of Miya. Although the Safianoff references does not disclose an applicator having tines thereon, attention is directed to the Miya reference, which discloses another multiple container dispensing device wherein a tined applicator is employed in order to enable a user to spread the mixed product via tines. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ such a tined

actuator onto the Safianoff device in order to enable a user to apply the mixed product via tines if so desired.

***Allowable Subject Matter***

Claims 16-24, 28-32 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 703-308-0608. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
1/10/04